

THE NEW YORK CRIMINAL BAR ASSOCIATION

An Affiliate of the National Association of Criminal Defense Lawyers



NYCBA Members Newsletter

Vol. 2, No. 8

May, 2005

Welcome to the May 2005 issue of our Newsletter.

President's Message:

The big news this month is our upcoming Annual Dinner, which will be held **next Wednesday evening, June 1, 2005**. As usual, our dinner will be held at the picturesque **Tavern on the Green**, Central Park West at 67th Street in Manhattan. Cocktails start at 6:00 P.M., and the dinner will follow at 7:15 P.M.

As I am sure you know by now, this year our Guest of Honor will be **Lawrence Hochheiser**, one of our past Presidents and an outstanding leader of the criminal bar in New York for many years. We are also privileged to have **Murray Richman**, another past President, as our Guest Speaker.

The Annual Dinner is always one of the great social events of the year, and I hope that you will make every effort to attend. Tickets are \$135 for members and \$145 for non-members; and you can now purchase your tickets online, using a major credit card. Just go to to our Website at www.nycrimbar.org/members, click on the "Members Info" button, and then select "Events" from the drop-down list.

I look forward to seeing you at this gala event next Wednesday evening.

Annual Dues:

If you have not yet paid your New York Criminal Bar Association dues for 2005, which were due on Jan. 1, please make your payment today by sending your check or faxing your credit card authorization for \$100 to Michael Bachrach, Treasurer, 1735 York Ave., Ste. 35-C, New York, New York, tel. (212) 369-3900; fax (212) 369-4516; email mbach2000@yahoo.com. Payments may also be made through our website. Simply click on the "Members Info" button, select "Events" and then follow the links for payment of annual dues instead of for the annual dinner.

Please note that we will shortly be deleting non-paying Members from our membership database. If that happens, you will no longer receive this monthly Newsletter or the *Punch and Jurists* weekly newsletter, nor will you have access to the "Members" section of our database or access to the members sections of www.fedcrimlaw.com and www.ussguide.com. So, to avoid being cut off from these Membership benefits, please make sure your dues are current.

U.S. v. Booker Update:

For those interested in following the most comprehensive coverage of the latest *Booker* developments we continue to recommend three sources:

- a) the special *Booker* Resource Center on the Internet maintained by *Punch and Jurists* at <http://www.ussguide.com/members/BulletinBoard/Booker/index.cfm/>;
- b) Professor Douglas Berman's [Sentencing Law and Policy](#) site on the Internet; and
- c) the [Second Circuit Blog](#), where various attorneys with the Federal Defenders' Unit of The Legal Aid Society present daily summaries of all the latest Second Circuit decisions, including detailed analyses of the latest *Booker*-related developments.

We also commend to you two excellent *Booker* articles that recently appeared in the New York Law Journal, as follows:

- First, an article entitled "[Sentencing](#)," which appeared in the May 17, 2005 issue of the NYLJ, in which Lewis J. Liman and David E. Brodsky wrote a

summary analysis of the Second Circuit's approach to *Booker*.

- Second, an article entitled "[Sentencing Post-'Booker' From a Defense Perspective](#)," which appeared in the May 19, 2005 issue of the NYLJ, in which David B. Fein and Joshua Ratner discussed *Booker's* impact on federal defendants and their counsel.

NYCBA Web Site Features:

Each month, we try to point out some of the latest resources that we have posted on our Website at www.nycrimbar.org/. In keeping with that tradition, we note the following items:

- We have posted under the "Decisions" button a copy of Justice Karen Smith's 19-page ruling in [Cubas v. Martinez, No. 112371/04 \(Supreme Court of the State of New York, May 9, 2005\) \(Justice Karen S. Smith\)](#). That ruling results from a lawsuit filed on behalf of five immigrants by the Puerto Rican legal Defense and Education Fund against Raymond Martinez, the Commissioner of the New York State Department of Motor Vehicles. The suit challenged a series of practices adopted by the DMV to deny driver's licenses to immigrants who cannot show that they are in the United States and to suspend the licenses of about 252,000 driver's licenses of persons who gave Social Security numbers that were found to be invalid. In this 19 page ruling, Justice Smith sternly reprimanded the DMV, stating that it had exceeded its authority when it adopted the new restrictions. "[The DMV] simply lacks expertise and, more importantly, it has not been empowered by the State legislature to carry out this function." For a more detailed summary of the holding in this case, see "[Denial of Driver's Licenses to Many Immigrants Voided](#)," by Julia Preston, The New York Times, May 11, 2005.

However, we also note that the impact of this decision would soon be canceled by new Federal legislation that is now coursing its way through Congress. That legislation, known as the **Real ID Act of 2005**, would among other things deny driver's licenses to anyone who does not possess a new Federally approved, electronically readable ID card.

Following a disturbing practice that seems to be becoming all too common in the current Congress, the Real ID bill has been tacked on to a "must-pass" piece of legislation - namely a special appropriations bill to provide funds for our troops in Iraq and Afghanistan - in order to make sure that there are no hearings or any substantive debate on its scope and features.

The New York Times quickly saw through that charade and commented on the "sneaky business" behind this bill. In an Editorial on May 4, 2005 entitled "[An Unrealistic 'Real ID'](#)," the Times wrote:

"What Congress is doing . . . is to ram through a bill that turns state-issued driver's licenses into a kind of phony national identity card through the mislabeled 'Real ID' provision. And in order to make absolutely sure there's no genuine debate, the sponsors have tied it to a crucial bill providing funds for American troops in Iraq and Afghanistan. Attaching a bad bill to a vital one is a sneaky business, making it nearly impossible for thoughtful members of Congress to vote against it. In this case, in order to provide financial support to American troops doing dangerous service abroad, lawmakers are stuck also supporting a plan that eliminates the chance of doing anything serious about identity security."

- We have posted under the "Legal Research" button an Outline of a CLE Seminar recently given by Scott B. Tulman and Michael K. Bachrach for the Marino Institute for Continuing Legal Education. The seminar was entitled "[Effective, Zealous and Ethical Criminal Defense Advocacy](#)." Although the seminar was directed towards newly admitted lawyers, we have posted a copy of their outline because it provides a comprehensive overview of the subject matter and is useful to lawyers of all levels of experience.
- Although the [Judicial Directory](#) on the [New York State Unified Court System](#) Website still does not list the names of, or any biographical information concerning, the Justices currently serving on the First and Second Departments of the Appellate Division, we have posted detailed biographies for the Justices serving on both of those courts. To view the biographies of the Justices currently serving on the Appellate Division - First Department, click [here](#). To view the biographies of the Justices currently serving on the Appellate Division - Second Department, click [here](#).
- Finally, we note that all of the telephone numbers for the New York City Civil Courts have recently changed. Accordingly, as a service to our readers, we have posted a list of the new telephone numbers for the [Judges](#) and for the [County Clerks](#).

News From the Web

- By now, most of our Members are aware of the [WebCrims Case Information Service](#), which provides case searches and court calendars for **criminal** cases in 13 downstate counties in New York - namely, the five boroughs in New York City (Bronx, New York, Queens, Kings and Richmond), plus the following eight counties: Dutchess, Erie, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester. We are frequently asked if there is a comparable service for civil cases in New York.

Since 1999, [CourtAlert.com](#) has provided a commercial service for electronically watching **civil** cases in New York. For a fee of \$11 per month (roughly 55 cents per day), CourtAlert provides electronic watch services for each civil case in the following courts in New York:

- New York City Civil Court - New York County
- New York County - Surrogate's Court
- New York State Supreme Court (New York City, Long Island and Westchester)
- Appellate Division - First Department
- Appellate Division - Second Department
- Appellate Division - Third Department
- New York State Court of Appeals

In addition, CourtAlert also provides similar services for the following Federal Courts in New York:

- U.S. District Court - E.D.N.Y.
- U.S. District Court - S.D.N.Y.
- U.S. Court of Appeals - Second Circuit

- [SecurityPipeline.com](#) has posted an informative article entitled "[How to Avoid Getting Spyware](#)." The article, by Mitch Wagner, explains in layman terms some of the "rules of the road" that will help keep spyware off your computer.

The NYCBA Bulletin Board:

The "Bulletin Board" feature of the NYCBA Website is an excellent way for NYCBA members to exchange information about the latest developments regarding legal issues of interest. A member can post letter submissions, and write memos about oral arguments and judges' reactions and rulings. Formal motions and briefs can also be posted. To post an item, just go to the "[Bulletin Board](#)" section of the

Website, click on "new message", select an existing subject (such as "*Booker*") or, if there is no existing subject for your topic, create a new descriptive subject, then fill in your name, etc., as directed, and type in your message or "copy and paste" your posting from your word processing program.

Comments and Newsletter Contributions Welcome

Comments on this and future issues of this Newsletter are most welcome, as are your own stories about cases, issues, arguments, events. etc. - whether just a sentence or a paragraph to alert us to a recent development, or a longer piece. Please send your material to Scott Tulman, Chair of the Internet and Newsletter Committee at Tel.: (212) 867-3600 or email: stulman@aol.com - or send your comments by email directly to our committee at: nycrimbar@nyc.rr.com.

Yours for a better defense,

Henry J. Steinglass
President

Internet and Newsletter Committee:

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